



**4310-EJ**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**[NPS-LACH-18360; PPPWNOCAM3 PPMOMFO1Z.F00000]**

**RIN 1024-AE09**

**Special Regulations, Areas of the National Park System, Lake Chelan National Recreation Area, Solid Waste Disposal**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to authorize a solid waste transfer station near Stehekin, Washington, within the boundary of Lake Chelan National Recreation Area, that does not meet all regulatory siting criteria and accepts solid waste generated within the boundary of the recreation area from non-NPS activities. The proposed rule would authorize this transfer station, notwithstanding certain restrictions found in the general regulations governing solid waste disposal sites in units of the National Park System.

**DATES:** Comments must be received by 11:59 PM EST on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE09, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* National Park Service, North Cascades National Park Complex, 810 State Route 20, Sedro-Woolley, WA 98284, Attn: Kerri L. Cook, Facility Operations Specialist

Instructions: All submissions received must include the words “National Park Service” or “NPS” and the docket number or RIN (1024-AE09) for this rulemaking. Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. The NPS need not consider comments that it receives after the end of the comment period (see **DATES**) or comments delivered using a method that is not listed above (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Kerri L. Cook, Facility Operations Specialist, National Park Service, North Cascades National Park Complex, 810 State Route 20, Sedro-Woolley, WA 98284; (360) 854-7280. Email: [Kerri\\_Cook@nps.gov](mailto:Kerri_Cook@nps.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On December 22, 1994, the National Park Service (NPS) adopted the regulations codified at 36 CFR part 6 to implement a statutory requirement of Public Law 98-506 (54 U.S.C. 100903) (Act), which was enacted in 1984. The Act prohibits the operation of a solid waste disposal site within the boundary of any unit of the National Park System except for those operating as of September 1, 1984, or those “used only for disposal of wastes generated within that unit of the park system so long as such site will not degrade any of the natural or cultural resources of such park unit.” The Act directed the Secretary of the Interior to promulgate regulations “to carry out

the provisions of this subsection, including reasonable regulations to mitigate the adverse effects of solid waste disposal sites in operation as of September 1, 1984, upon property of the United States.”

36 CFR part 6 regulates both existing and new solid waste disposal sites within the boundaries of any unit of the National Park System to ensure that operation of such sites will not degrade the natural or cultural resources of the park unit. Transfer stations are included in the definition of “solid waste disposal site” in § 6.3 and are therefore subject to 36 CFR part 6.

Section 6.4(a) prohibits any person (including NPS) from operating a new solid waste disposal site within the boundaries of a park unit unless the criteria in § 6.4(a) are met. Section 6.4(a)(1) requires that the solid waste handled by the site is generated solely from “National Park Service activities,” defined in § 6.3 as “operations conducted by the National Park Service or a National Park Service contractor, concessionaire or commercial use licensee.” Section 6.4(a)(9) requires that “the site is not located within one mile of a National Park Service visitor center, campground, ranger station, entrance station, or similar public use facility, or a residential area.” Section 6.4(a)(10) requires that the site is not detectable by public sight, sound, or odor from a scenic vista, a public use facility, a designated or proposed wilderness area, a site listed on (or eligible for listing on) the National Register of Historic Places, or a public road. Section 6.8(a) prohibits the NPS from accepting waste at an NPS operated solid waste disposal site, except for waste generated by NPS activities.

### **Proposed Rule**

The NPS proposes a park-specific regulation in 36 CFR 7.62 to authorize a limited exception to the part 6 requirements described above. The proposed rule would authorize an NPS transfer station on federal lands near Stehekin, Washington, within the boundary of Lake Chelan

National Recreation Area (LACH or park), that does not satisfy all of the siting requirements in part 6 and that accepts non-NPS waste generated by the Stehekin community. The need for this proposed regulation is explained below.

Stehekin is a remote community of approximately 75 year-round plus 80 seasonal residents, located on privately owned land within the statutory boundary of LACH. Stehekin is located at the head of 55-mile-long Lake Chelan and is accessible only by boat, float plane, or foot trail. Non-NPS services and facilities in Stehekin include seasonal lodging, food operations, and other small businesses that help support 35,000-45,000 park visitors annually. NPS operates the only facility in the Stehekin Valley for the management of solid waste. Waste consolidated at the NPS transfer station is shipped by barge 55 miles down the lake for ultimate disposal.

Geographically isolated private residents and businesses in Stehekin have no feasible method of properly disposing solid waste other than the NPS transfer station. Consequently, NPS has for many years accepted Stehekin community waste in its transfer station to deter small dumps on private lands and illegal dumping on public lands. Although the Act does not prohibit NPS from receiving Stehekin waste, this waste does not qualify as waste generated from “National Park Service activities” under the existing regulations, so the current practice of accepting waste from Stehekin at the existing NPS transfer station conflicts with §§ 6.4(a)(1) and 6.8(a) of 36 CFR part 6.

The existing NPS transfer station is located within the 100-year floodplain and is part of a larger maintenance facility that is being relocated outside of the Stehekin River floodplain due to frequent flooding.<sup>1</sup> The NPS seeks to build a new transfer station at the site of the new

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<sup>1</sup> For more information about flooding in the Stehekin River Channel Migration Zone and plans to move the existing maintenance facility, see the Stehekin River Corridor Implementation Plan and Final Environmental Impact Statement (FEIS) which can be viewed at the park’s planning website,

maintenance facility in a more environmentally suitable location within LACH but outside the 100-year floodplain. The NPS has determined that there is no available or suitable nonfederal land, and a limited amount of buildable federal land, outside the floodplain in the lower Stehekin River valley.<sup>2</sup> The NPS has also determined that, due to geographic constraints, there are no suitable locations for the new transfer station that comply with the site location requirements in § 6.4(a)(9) and (10). Specifically, like the existing maintenance facility and transfer station, the proposed site of the new transfer station: (i) is located within one mile of a campground (Harlequin Campground) and residential housing; (ii) will likely be visible from scenic vistas and off-trail areas in designated wilderness areas; (iii) may be heard from a campground (Harlequin Campground); and (iv) may be detectable by sight, sound, or odor from a road open to public travel.

The NPS has determined that in these unique circumstances, it would best protect park resources to allow the NPS transfer station, whether at the existing or proposed location, to accept waste generated by the community of Stehekin, notwithstanding the prohibition on accepting non-NPS waste in §§ 6.4(a)(1) and 6.8(a) and the siting criteria in § 6.4(a)(9) and (10). Due to its geographic isolation, the community of Stehekin has no environmentally responsible or practicable alternative for the disposal of its waste, much of which is generated by the provision of essential services to thousands of park visitors each year. Prohibiting this community from using the existing or proposed NPS transfer station could result in the illegal disposal of waste on park lands, or other disposal practices which would degrade the natural

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<http://www.nps.gov/noca/parkmgmt/planning.htm>, then click on the link entitled “Stehekin River Corridor Implementation Plan/Environmental Impact Statement (2012).”

<sup>2</sup> See the Replacement of Administrative Facilities at Stehekin Environmental Assessment that tiers off the 2012 FEIS and specifically evaluates what facilities would be constructed and precisely where they would be located. This document can be viewed at <http://parkplanning.nps.gov/SMFRP> by clicking on “Document List.”

resources of LACH. In this exceptional situation, accepting non-NPS-generated waste for transfer and ultimate disposal outside the park boundary would pose significantly fewer environmental land use concerns than other alternatives. This determination is supported by the analysis contained in the November 2014 Replacement of Administrative Facilities at Stehekin Environmental Assessment (EA), which examined the environmental impacts of the continued operation of the existing NPS transfer station and the construction and operation of the new transfer station, which will employ contemporary environmental methods for handling waste.

The NPS promulgates a special regulation to authorize an exception to a prohibition found in a general regulation only in limited circumstances. The only other exceptions to the part 6 requirements have been granted by special regulation for Alaskan parks under similar circumstances, where geographically isolated communities have no feasible alternative for solid waste disposal that complies with the part 6 requirements. The proposed rule would accommodate the exceptional circumstances of the Stehekin community, which is located in a remote area within the boundary of LACH and which has no other practicable options for environmentally responsible solid-waste disposal. It is designed only to authorize the operation of the existing transfer station and the proposed transfer station at the locations identified in the EA, which the NPS believes would best protect park resources based upon the analysis contained in the EA. All other requirements in part 6 would remain in effect and apply to the existing and new NPS transfer station, including the requirement in § 6.4(a)(3) that the site of the existing and new facility “will not degrade any of the natural or cultural resources” of LACH. The proposed rule is consistent with the Act, which does not prohibit solid waste disposal sites from handling waste generated by non-NPS activities provided the waste is generated within a park unit and will not degrade any of the park unit’s natural or cultural resources. The proposed rule does not

supersede or replace other requirements applicable to solid waste disposal sites, including the requirement (unless there is an approved waiver) in Director's Order #35B (Sale of National Park Service Produced Utilities) that NPS recover the cost of utilities (including the collection and disposal of solid waste) provided to non-NPS users.

Under these circumstances, the NPS has determined that the exceptions to part 6 in the proposed rule are necessary and would protect park resources by authorizing the NPS to accept solid waste generated by the community of Stehekin in the existing and proposed transfer stations.

### **Compliance With Other Laws, Executive Orders, and Departmental Policy.**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. It emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

### **Regulatory Flexibility Act.**

This rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the benefit-cost and regulatory flexibility analyses found in the report entitled “Benefit-Cost and Regulatory Flexibility Analyses: Solid Waste Management at Lake Chelan National Recreation Area” which can be viewed online at <http://parkplanning.nps.gov/SMFRP> by clicking the link entitled “Document List.”

**Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This proposed rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act.**

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630).**



This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

**Federalism (Executive Order 13132).**

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988)**

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation With Indian Tribes (E.O. 13175 and Department policy).**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian tribes.

In May and July 2014, the NPS sent letters to the Tribal Historic Preservation Officers for the Colville Confederated Tribes and the Confederated Tribes and Bands of the Yakama Nation inviting comment regarding the inventory, evaluation, and finding of no effect on cultural

resources within the project area. This encompasses the relocation of all maintenance facilities, including the transfer station, as proposed in the preferred alternative (Alternative 2) in the EA. These tribes did not identify any significant concerns related to the project.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).**

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act of 1969 (NEPA).**

We have prepared an environmental assessment to determine whether this rulemaking will have a significant impact on the quality of the human environment under NEPA. This proposed rule would implement part of the preferred alternative (Alternative 2) in the EA that is referenced above and available online at <http://parkplanning.nps.gov/SMFRP> by clicking on “Document List.”

**Effects on the Energy Supply (Executive Order 13211).**

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Clarity of this regulation.**

The NPS is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a. Be logically organized;
- b. Use the active voice to address readers directly;

- c. Use common, everyday words and clear language rather than jargon;
- d. Be divided into short sections and sentences; and
- e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in ADDRESSES section above. To better help us revise this proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **Drafting Information**

The primary author of this proposed regulation is Jay Calhoun, Regulations Program Specialist, Division of Regulations, Jurisdiction, and Special Park Uses, National Park Service, 1849 C Street, NW, Washington, DC 20240.

### **Public Participation**

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the ADDRESSES section above.

### **Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS proposes to amend 36 CFR part 7 as follows:

### **PART 7 – SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority citation for part 7 continues to read as follows:

**Authority:** 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. In §7.62, add paragraph (d) as follows:

#### **§7.62 Lake Chelan National Recreation Area.**

\* \* \* \* \*

(d) *Solid waste disposal.* A solid waste transfer station located near Stehekin within the boundary of Lake Chelan National Recreation Area must comply with all provisions in 36 CFR part 6, except it may:

- (1) Accept solid waste generated within the boundary of the park unit that was not generated by National Park Service activities;
- (2) Be located within one mile of a campground or a residential area;
- (3) Be visible by the public from scenic vistas or off-trail areas in designated wilderness areas;
- (4) Be detectable by the public by sound from a campground; and
- (5) Be detectable by the public by sight, sound, or odor from a road open to public travel.

Dated: July 1, 2015.

Michael Bean

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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